

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GABRIEL McCAIN,

Plaintiff,

CIV S-05-0854 GEB PAN PS

v.

FINDINGS AND RECOMMENDATIONS

DEPENDENCY ASSOCIATES OF
SACRAMENTO, KATHERINE M.
FOGARTY,

Defendants.

—oOo—

On May 19, 2005, this court granted plaintiff's motion to proceed in forma pauperis but dismissed plaintiff's complaint on the ground it failed to set forth a claim upon which this court may grant relief. 28 U.S.C. §§ 1915(e)(2)(B)(ii). The court directed plaintiff to file an amended complaint within twenty days or by June 13, 2005.¹ The court warned that "[f]ailure timely to amend the complaint may result in a recommendation this

¹ This period includes an additional three days for service pursuant to Fed. R. Civ. P. 6(e).

1 action be dismissed. See Fed. R. Civ. P. 41(b)."

2 Plaintiff has neither filed an amended complaint nor
3 otherwise responded to the court's order.

4 Accordingly, I recommend this action be dismissed for
5 plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b)
6 (dismissal warranted for "failure of the plaintiff to prosecute
7 or comply with these rules or any order of court"); see also,
8 Fed. R. Civ. P. 16(f) (authorizing dismissal pursuant to Rule
9 37(b)(2)(C) "[i]f a party . . . fails to obey a . . . pretrial
10 order"); E. D. Cal. L. R. 11-110 ("[f]ailure of . . . a party to
11 comply with these Rules or with any order of the Court may be
12 grounds for imposition by the Court of any and all sanctions
13 authorized by statute or Rule or within the inherent power of the
14 court").

15 These findings and recommendations are submitted to the
16 Honorable Garland E. Burrell, Jr., the United States District
17 Judge assigned to this case. 28 U.S.C. § 636(b)(1). Written
18 objections may be filed within ten days after being served with
19 these findings and recommendations. The document should be
20 captioned "Objections to Magistrate Judge's Findings and
21 Recommendations." The failure to file objections within the

22 ////

23 ////

24 ////

25 ////

26 ////

1 specified time may waive the right to appeal the District Court's
2 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: June 29, 2005.

4 /s/ Peter A. Nowinski
5 PETER A. NOWINSKI
6 Magistrate Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26